

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

No. C 94-2307 CW

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

ORDER GRANTING IN  
PART, AND DENYING  
IN PART, MOTION TO  
CORRECT OR MODIFY,  
DENYING MOTION TO  
STAY AND GRANTING  
MOTION TO STRIKE  
(Docket Nos. 1978,  
1985 and 2019)

Defendants seek to modify or correct the Court's January 13, 2012 Order, in which the Court granted Plaintiffs' motion to require Defendants to track and accommodate the needs of Armstrong class members housed in county jails and to provide access to a workable grievance procedure. Defendants also seek to stay that order pending the Court's decision on their motion to modify or correct or pending a subsequent appeal to the Ninth Circuit Court of Appeals. Plaintiffs oppose Defendants' motions. Having considered the papers filed by the parties and their arguments at the hearing, the Court DENIES Defendants' motion to stay and GRANTS IN PART and DENIES IN PART their motion to modify or correct.<sup>1</sup>

<sup>1</sup> Defendants also seek to strike portions of Plaintiffs' Objections to Defendants' Reply Evidence. Defendants argue that Plaintiffs include with their objections further argument on Defendants' motions, in violation of Local Rule 7-3(d). The Court GRANTS Defendants' motion to strike (Docket No. 2019) and hereby strikes lines 1:10-11, 2:25-3:15, 3:26-4:24 and 5:19-23 of Plaintiffs' Objections to Defendants' Reply Evidence.

## 1 I. Defendants' Motion to Modify or Correct

2 The Court finds many of Defendants' arguments that the  
3 January 13, 2012 Order was in error to be unavailing. The Court  
4 declines to read the words "sole" or "exclusive" into the text of  
5 California Penal Code section 3056 before the words "legal custody  
6 and jurisdiction of local county facilities." Contrary to  
7 Defendants' characterization, the word "supervision" does not have  
8 the same meaning as "jurisdiction." The clear meaning of the  
9 statutory text stating that "parolees shall be returned to the  
10 parole supervision" of the state is simply that parolees are not  
11 terminated from parole when they violate the terms of their  
12 supervision and serve a revocation term in county jail, but  
13 instead must continue on parole supervision afterwards. The Court  
14 finds that the legislative intent in amending section 3056 was not  
15 to abdicate the state's responsibility toward Armstrong class  
16 members for compliance with the Americans With Disabilities Act  
17 (ADA), 42 U.S.C. §§ 12131 et seq., and transfer it to the  
18 counties, but rather to limit the physical location where state  
19 parolees, whose parole is revoked, may be housed to county jails,  
20 to facilitate reentry and reintegration into the community. To  
21 find otherwise would require this Court to consider whether  
22 section 3056 is void, which it declines to do given that the more  
23 reasonable construction of section 3056 is consistent with  
24 legislative intent.

25 Further, although state law prevents Defendants from housing  
26 certain parolees in state prisons upon revocation of parole,  
27 Defendants point to no part of state law that restricts their  
28 discretion in determining in which county jail they may house that

1 parolee. State law does not appear to require Defendants to  
2 choose to house parolees with disabilities in county jails that do  
3 not provide adequate accommodations to them.

4 The Court does find cause to modify its prior order to  
5 clarify or correct certain items. On page 17 of the order, the  
6 Court mistakenly referred to sections 30025 and 30029(c) as  
7 California Penal Code sections. They are California Government  
8 Code sections. However, the Court does not modify its conclusion  
9 that, while the funding amounts allocated to each county are fixed  
10 for the current year, because the allocations were determined by a  
11 formula that takes into account the number of prisoners that a  
12 county was expected to supervise and house, future funding to a  
13 county could be reduced if Defendants are expected to house fewer  
14 parolees in that county.

15 Defendants believe that, on page 16 of the order, the Court  
16 cited abrogated authority in Samson v. California, 547 U.S. 843  
17 (2006), for the proposition that, after realignment, parolees  
18 remain in Defendants' continuing custody and control. Instead,  
19 the Court cited Samson for its reference to the former section  
20 3056. To clarify this, the Court modifies the parenthetical  
21 following the citation to read as follows:

22 (noting, prior to realignment, that "an inmate-turned-  
23 parolee remains in the legal custody of the California  
24 Department of Corrections through the remainder of his  
25 term").

26 Defendants also argue that the Court mis-stated the contents  
27 of their memorandum setting forth their policies implementing  
28 realignment. Specifically, the Court stated that, if county jail  
staff denied a medically cleared parole violator booking into a

1 county jail, Defendants' policies required Defendants to maintain  
2 custody of the person. To clarify that Defendants' policies  
3 require Defendants to maintain custody while the Agent of Record  
4 contacts his or her supervisor for further instruction, the Court  
5 replaces its reference to Defendants' policies on page 16 of the  
6 order with the following:

7 Under Defendants' implementing policies, county jails  
8 are not typically permitted to turn away parolees who  
9 have been medically cleared and whom Defendants bring to  
10 the county jails, but if they do so, Defendants must  
11 "maintain custody" of the parolee while Defendants  
12 determine how to resolve the situation. Grunfeld Reply  
13 Decl., Ex. K at 4. State law does not appear to prevent  
14 Defendants from then placing the parolee in a different  
15 county jail. Further, under Defendants' policies, when  
16 county authorities release a parolee before revocation  
17 processing is complete, Defendants retain the discretion  
18 to return the parolee to custody or to allow the parolee  
19 to remain in the community. Grunfeld Reply Decl., Ex. L  
20 at 4.

21 II. Defendants' Motion to Stay

22 "A stay is not a matter of right, even if irreparable injury  
23 might otherwise result.'" Nken v. Holder, 129 S. Ct. 1749, 1760  
24 (2009) (quoting Virginian R. Co. v. United States, 272 U.S. 658,  
25 672 (1926)). Instead, it is "an exercise of judicial discretion,"  
26 and "the propriety of its issue is dependent upon the  
27 circumstances of the particular case." Id. (citation and internal  
28 quotation and alteration marks omitted). The party seeking a stay  
bears the burden of justifying the exercise of that discretion.  
Id. "A party seeking a stay must establish that he is likely to  
succeed on the merits, that he is likely to suffer irreparable  
harm in the absence of relief, that the balance of equities tip[s]  
in his favor, and that a stay is in the public interest." Humane  
Soc. of U.S. v. Gutierrez, 558 F.3d 896, 896 (9th Cir. 2009); see

1 also Perry v. Schwarzenegger, 702 F. Supp. 2d 1132, 1135 (N.D.  
2 Cal. 2010).

3 Defendants have not demonstrated a likelihood of success in  
4 overturning this Court's order finding that system-wide relief is  
5 necessary. They do not challenge the portion of the Court's order  
6 that addressed state parolees and prisoners that are held in  
7 county jails for reasons other than section 3056, such as  
8 contracts or to participate in In-Custody Drug Treatment Programs  
9 (ICDTPs), and they still do not dispute that there will continue  
10 to be at least some class members in county jails. As noted in  
11 the Court's order of January 13, 2012, the Ninth Circuit has  
12 repeatedly held in prior decisions related to this case that "'if  
13 the injury is the result of violations of a statute . . . that are  
14 attributable to policies or practices pervading the whole system  
15 (even though injuring a relatively small number of plaintiffs),'  
16 then '[s]ystem-wide relief is required.'" Armstrong v.  
17 Schwarzenegger, 622 F.3d 1058, 1072-73 (9th Cir. 2010) (quoting  
18 Armstrong v. Davis, 275 F.3d 849, 870 (9th Cir. 2001)).

19 Defendants do not dispute that there are currently class members  
20 still housed in county jails or that Defendants' system-wide  
21 policies and practices have caused, and continue to cause,  
22 substantial injury to class members. Thus, even if Defendants  
23 successfully challenge the portion of the Court's prior order  
24 related to state parolees housed in county jails pursuant to  
25 section 3056, they will nevertheless be required to formulate a  
26 plan to carry out the prescribed injunctive relief for the  
27 remaining individuals for whom they are indisputably responsible.  
28

1 While the Court is skeptical of the accuracy of the  
2 unsupported estimate provided by Defendants' declarant that the  
3 economic burden of complying with the prior order will be "in the  
4 millions of dollars," even assuming that this estimate is correct,  
5 Plaintiffs' strong showing of ongoing and substantial harm to  
6 class members--including class members for whom Defendants do not  
7 dispute they have responsibility--outweighs these financial  
8 concerns. Based on the declarations that it was presented with in  
9 support of Plaintiffs' motion, the Court already found  
10 "overwhelming and disturbing evidence" of ongoing and extreme  
11 rights deprivations suffered by class members in county jails,  
12 which was chronicled in detail in the January 13, 2012 Order. The  
13 class members will continue to suffer substantial harm for each  
14 day that their disabilities are not accommodated. Balanced  
15 against the speculative administrative and monetary arguments and  
16 evidence presented by Defendants, the balance of harms clearly  
17 favors Plaintiffs.

## 18 CONCLUSION

19 For the reasons set forth above, the Court GRANTS IN PART and  
20 DENIES IN PART Defendants' motion to correct or amend (Docket No.  
21 1978), DENIES Defendants' motion to stay (Docket No. 1985) and  
22 GRANTS Defendants' motion to strike (Docket No. 2019).

23 IT IS SO ORDERED.

24  
25 Dated: 4/11/2012

26   
27 CLAUDIA WILKEN  
28 United States District Judge